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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 06-0479 JCS
)	
Plaintiff,)	STIPULATION TO AMEND
)	THE RESTITUTION PAYEE
v.)	INCLUDED IN THE
)	SENTENCING AND JUDGMENT
HOWARD MICHAEL MACK,)	
)	
Defendant.)	
)	

The parties in this matter appeared before the Court on December 1, 2006, for Judgment and Sentencing in the above captioned matter. At that hearing the Court imposed a sentence on defendant that included, among other conditions, a restitution payment of \$9,385.00, that was to be paid in \$50 monthly installments to the United States Social Security Administration (SSA). The government represented that payments were required to be made to the SSA because under the charging document (18 U.S.C. § 641 Theft of Government Property) the SSA was the victim of the fraud. The parties agreed with this representation, and the Court included the SSA as the payee of the restitution.

Subsequent to the sentencing hearing, it became apparent to the government that it was error to represent to the Court that the payments must be made to the SSA. In fact, under 18 U.S.C. § 3663A, the defendant shall “make restitution to the victim of the offense or, if the victim is deceased, to the victim’s estate.” *See* 18 U.S.C. § 3663A(a)(1). The victim in this case includes both the government, as well as the deceased Mr. Naatz (§ 3663A(a)(2) instructs that “victim” means a person directly and proximately harmed as a result of the offense or the defendant’s criminal conduct). Here, Mr. Naatz was harmed by the defendant’s criminal conduct of stealing from the United States government. Under § 3663A(a)(3), the Court shall order, if agreed by the parties in the plea agreement, restitution to persons other than the victim of the offense.

THE PARTIES HEREBY STIPULATE that the United States Social Security Administration should not be the payee for the restitution payments in the above captioned matter.

THE PARTIES FURTHER STIPULATE, and request the Court to include in the Judgment, that the designated payee of the restitution payments in the amount of \$9,385.00, will be: The Estate of Kenneth Naatz, c/o Roberta M. Hayhurst, 7170 E. Princeton Ave. #1, Denver, CO 80237.

IT IS SO STIPULATED:

KEVIN V. RYAN
United States Attorney

DATED: 12/1/2006

/s/ Derek Owens

DEREK R. OWENS
Special Assistant United States Attorney

DATED: 12/1/2006

/s/ Geoff Hansen

GEOFF HANSEN
Federal Public Defender

Dated: 12/4/6

Stipulation
CR 06-0479 JCS

